Attorney General. And if the legislature should seriously enact that judgeships of the Superior Court should be open only to veterans, and solely in the order of priority of application or of distinction in the late war, the absurdity, which exists equally in the law just condemned, would be patent even to the most misguided patriot.

The case against the law was also made stronger by the sixth article of the Massachusetts Bill of Rights. "No man nor corporation nor association of men have any other title to obtain advantages or particular and exclusive privileges distinct from those of the community than what arises from the consideration of services rendered to the republic." This the court, aided by the slightly different phrasing of the Virginia Bill of Rights of 1776, whence the provision was taken, holds to mean services rendered as a condition concurrent with exclusive privileges, pointing out very justly that the other construction would justify a life peerage and similar grants of privilege. Taking everything together, then, the court has made its decision impregnable, although perhaps a little narrow in its insistence on all the aspects of the particular case. A law that a man must be installed in a public office requiring peculiar fitness, whether or no he was fit, could not and did not stand.

SELF-INCRIMINATING TESTIMONY. — A United States statute provides that no person shall be excused from testifying before the Interstate Commerce Commission on the ground that his testimony may tend to criminate him; but that he shall not be prosecuted or subjected to any penalty on account of any transaction concerning which he may testify. In *Brown* v. *Walker*, 16 Sup. Ct. Rep. 644, the Supreme Court recently held, five judges against four, that this statute is not in conflict with the fifth amendment to the Constitution, which provides that no person "shall be compelled in any criminal case to be a witness against himself." The majority of the court was of the opinion that the guarantee against prosecution furnished by the statute amply satisfied the requirements of the Constitution. The only previous decision on the point, *United States* v. *James*, 60 Fed. Rep. 257, in the District Court, is overruled.

In the well known case of *Counselman* v. *Hitchcock*, 142 U. S. 547, a previous statute of similar purport, which had merely provided that no evidence given by the witness should be used against him in any criminal proceeding, was declared unconstitutional. The court went on the ground that the protection afforded by the statute was not broad enough, as the testimony might be used to search out other testimony to be used against the witness. Whether the wording of the Constitution required such a decision may perhaps be doubted. In several of the States similar statutes have been held not in conflict with similar constitutional provisions. *State* v. *Quarles*, 13 Ark. 307; *People* v. *Kelly*, 24 N. Y. 74; *Kneeland* v. *State*, 62 Ga. 395. But at all events this particular difficulty is done away with in the later statute by the broad proviso that the witness shall never be prosecuted for the transactions concerning which he testifies. The majority opinion, by Mr. Justice Brown, treats the subject admirably in all its aspects, and reaches what seems to be the sound conclusion.

The two vigorous dissenting opinions bring out, however, at least three possible grounds for disagreeing with the decision. Mr. Justice Field contends, in the first place, that the constitutional amendment was intended to protect the witness, not only from prosecution, but from the

disgrace and infamy which would naturally result from his disclosures; and, secondly, that Congress was exceeding its power in attempting to protect the witness from prosecution, the pardoning power being exclusively a prerogative of the President. As to the first of these arguments, it is difficult to find any authority for it beyond the early case of *Respublica* v. *Gibbs*, 3 Yeates, 429. The well settled rule, that, if prosecution for the crime is barred by the Statute of Limitations, the witness must testify, is inconsistent with such a view. And it certainly seems on general principles that the constitutional provision was not intended to be pushed to such an extent. The second argument put forward by Mr. Justice Field seems to have even less weight. As is pointed out in the majority opinion, statutes of this sort, which are virtually acts of general amnesty, are by no means uncommon, either in England (see 2 Taylor on Evidence, § 1455) or in this country, and they have, almost without exception, been held constitutional. *State* v. *Nowell*, 58 N. H. 314; *People* v. *Sharp*, 107 N. Y. 427; *Ex parte Cohen*, 104 Cal. 524.

The three remaining dissenters, speaking through Mr. Justice Shiras, advance what appears to be a stronger argument. Their contention is that it is beyond the power of Congress to grant immunity from prosecution in the courts of a State for an offence against the State; that therefore the protection afforded the witness by the statute is not coextensive with the constitutional privilege. It hardly seems a satisfactory answer to this to say, with the majority of the court, that the applicability of a federal statute of this sort may well extend to the State courts under the sixth article of the Constitution. On the contrary, it is somewhat difficult to believe that Congress can order a State court to refrain from prosecuting an offender against the State. The true answer to the argument of the dissenting judges would appear to be that the constitutional protection is solely against prosecutions of the government that grants it; that if the witness is guaranteed against prosecution in the federal courts, the fifth amendment is complied with. The possibility of prosecution in a foreign country would not warrant the withholding of self-incriminating testimony. (See the opinion of Cockburn, C. J., in *Queen* v. *Boyes*, 1 B. & S. 311, 330.) Why should not this rule apply as between the federal jurisdiction and the States?

The decision of the court in *Brown* v. *Walker* seems on the whole sound in point of constitutional law. And the added power it gives to the Interstate Commerce Commission certainly renders it very satisfactory from a practical point of view.

THE RELATION OF A RECEIVER OF A CORPORATION TOWARDS ITS EXECUTORY CONTRACTS. — When a receiver is appointed to administer the assets of a corporation, the same phrase is commonly used to describe his relation towards the executory contracts of the corporation which is used to describe the relation of an assignee in bankruptcy towards the contracts of his insolvent or the relation of a person just come of age to his contracts made during infancy; namely, that he has a "reasonable time" in which to determine whether to affirm or disaffirm. It seems generally to have been assumed that the other incidents of the doctrine of reasonable time, as applied in the two cases named, apply also to a receiver; and, among them, that if with a knowledge of all the circumstances he either neglects unnecessarily to communicate his disaffirmance,